

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
APR 30 2004  
PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

PETITION OF NPCR, INC., )  
D/B/A NEXTEL PARTNERS FOR ) CASE NO. 2003-00143  
DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER IN )  
THE COMMONWEALTH OF KENTUCKY )

NOTICE OF FILING

Come Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; Peoples Rural Telephone Cooperative Corporation, Inc.; South Central Rural Telephone Cooperative Corporation, Inc., and the Independent Telephone Group<sup>1</sup> ("ITG"), by counsel, and notice herewith the filing of the testimony of Steven E. Watkins on behalf of ITG.

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BY: Lindsey Ingram, Jr.  
Lindsey Ingram, Jr.

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<sup>1</sup> An association of rural telephone companies consisting of Ballard Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Coalfields Telephone Company; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative Corporation, Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative Corporation, Inc.; North Central Cooperative Corporation; Peoples Rural Telephone Cooperative Corporation, Inc.; South Central Rural Telephone Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Incorporated and West Kentucky Rural Telephone Cooperative Corporation, Inc.

### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading has been served by mailing same, postage prepaid, on this 30th day of April, 2004, to the following:

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STOLL, KEENON & PARK, LLP

By   
Lindsey Ingram, Jr.

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**IN THE MATTER OF:**

**PETITION OF NPCR, INC. d/b/a**  
**NEXTEL PARTNERS FOR**  
**DESIGNATION AS AN ELIGIBLE**  
**TELECOMMUNICATIONS CARRIER**  
**IN THE COMMONWEALTH OF KENTUCKY**

**CASE NO. 2003-00143**

**Direct Testimony**  
**of**

**Steven E. Watkins**

**on behalf of the**  
**Independent Telephone Group**

**April 30, 2004**

**Direct Testimony of Steven E. Watkins**  
**Case No. 2003-00143**  
**April 30, 2004**

**Q1: Please state your name, business address and telephone number.**

**A:** My name is Steven E. Watkins. My business address is 2120 L Street, N.W., Suite 520, Washington, D.C., 20037. My business phone number is (202) 296-9054.

**Q2: What is your current position?**

**A:** I am Special Telecommunications Management Consultant to the Washington, D.C. law firm of Kraskin, Lesse & Cosson, LLC, which provides legal and consulting services to telecommunications companies.

**Q3: What are your duties and responsibilities at Kraskin, Lesse & Cosson, LLC?**

**A:** I provide telecommunications management consulting services and regulatory assistance to smaller local exchange carriers ("LECs") and other smaller firms providing telecommunications and related services in more rural areas. My work involves assisting client LECs and related entities in their analysis of regulatory requirements and industry matters requiring specialty expertise; negotiating, arranging and administering connecting carrier arrangements; and more recently assisting clients in complying with the rules and regulations arising from the passage of the Telecommunications Act of 1996 (the "Act"). On behalf of over one hundred and fifty (150) other smaller independent local exchange carriers, I am involved in regulatory proceedings in several other states examining a large number of issues with respect to the manner in which the Act should be implemented in those states. Prior to joining Kraskin, Lesse & Cosson, I was the senior policy analyst for the National Telephone Cooperative Association ("NTCA"), a trade association whose membership consists of approximately 500 small and rural telephone companies. While with NTCA, I was responsible for evaluating the then proposed Telecommunications Act, the implementation of the Act by the Federal Communications Commission ("FCC") and was largely involved in the association's efforts with respect to the advocacy of provisions addressing the issues specifically related to rural companies and their customers.

**Q4: Have you prepared and attached further information regarding your background and experience?**

**A:** Yes, this information is included in Attachment A following my testimony.

**Q5: On whose behalf are you testifying?**

**A:** I am testifying on behalf of the Independent Telephone Group ("ITG") which is comprised of thirteen (13) small and rural telephone companies and cooperatives

1 providing local exchange services to customers in rural Kentucky. More specifically, my  
2 testimony will focus on the request of Nextel Partners to be designated an Eligible  
3 Telecommunications Carrier ("ETC") in the service areas of four of the ITG members  
4 including Logan Telephone Cooperative, Inc. ("Logan"); Mountain Rural Telephone  
5 Cooperative Corporation, Inc. ("Mountain Rural"); Peoples Rural Telephone Cooperative  
6 Corporation, Inc. ("Peoples Rural"); and South Central Rural Telephone Cooperative  
7 Corporation, Inc. ("South Central") (to be referred to collectively as the "four  
8 Cooperatives").  
9

10 **Q6. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to discuss the policy and regulatory framework for the  
12 designation of additional ETCs in the service areas of Rural Telephone Companies and,  
13 more specifically, the record in this Case regarding the request of Nextel Partners to be  
14 designated an ETC in the service areas of the four Cooperatives listed above. My  
15 testimony demonstrates that there are substantial questions of fact and policy (a)  
16 regarding the ability of Nextel Partners to fulfill the requirements and criteria required to  
17 be designated an ETC in the service areas of the four Cooperatives, (b) regarding exactly  
18 how Nextel Partners would ensure that the objectives of Universal Service would be  
19 served in the event it were designated; (c) whether the public interest would be served by  
20 designating Nextel Partners as an ETC, and (d) whether any federal Universal Service  
21 Fund disbursements would be used consistent with the Universal Service principles in the  
22 Communications Act of 1934, as amended ("Act").

23 As I will address in this Testimony, there are overriding matters of policy and public  
24 interest concerns that raise overwhelming questions regarding the designation of more  
25 than one ETC in the service area of a Rural Telephone Company under the existing rules  
26 and regulations. A set of recommendations regarding these policy questions is before the  
27 FCC for further review and action. That recommendation from the Federal-State Joint  
28 Board ("Joint Board") has highlighted the very same questions of policy and facts that I  
29 present in this Testimony.

30 **Q7. Are the four Cooperatives Rural Telephone Companies?**

31 A. Yes. Each of the four Cooperatives provides telephone exchange service to fewer than  
32 50,000 access lines or otherwise provides telephone exchange service within a study area  
33 with fewer than 100,000 access lines within the Commonwealth of Kentucky.  
34 Accordingly, each of the four Cooperatives is a Rural Telephone Company as defined in  
35 the Act, and each of the four Cooperatives has previously been designated as the existing  
36 ETC within their respective study areas (*i.e.*, certificated service areas).

37 **Q8. Do you have any initial conclusions with respect to Nextel Partners ETC request?**

38 A. Yes. Based on what has, and has not, been filed by Nextel Partners, there has been no  
39 demonstration that Nextel Partners can comply with the service offering requirements

1 expected of all other existing ETCs serving rural areas of Kentucky. A rigorous review  
2 and analysis of the facts and policy is required to examine the claims and to make  
3 findings about the public interest implications of granting the Nextel Partners' request.

4 My recommendation is that such review should be guided by the following public interest  
5 principles:

6 1) There should be a specific and fact-intensive review of whether the applicant for an  
7 additional ETC in a Rural Telephone Company can actually fulfill the necessary  
8 requirements.

9 2) The Commission should apply its historical discretion to ensure that the public interest  
10 would truly be served by designation of more than one ETC in a Rural Telephone  
11 Company area.

12 3) All ETCs should be held accountable for their service offerings and commitment to  
13 Universal Service, and this accountability should be technology neutral.

14 **Q9. What kind of rigorous review is warranted?**

15 **A.** First, the ITG requested of Nextel Partners specifically relevant information regarding the  
16 extent of its service coverage and capabilities. This is exactly the type of fact-intensive  
17 information that would need to be analyzed to determine whether Nextel Partners can  
18 comply with the relevant requirements. The information that Nextel Partners has  
19 provided is not at the level of detail that allows the specific factual analysis. Regardless,  
20 even for the information that Nextel Partners has provided, indications are that Nextel  
21 Partners does not provide significant service coverage, if any at all, in the four  
22 Cooperatives' service areas.

23 Prior to the recent Joint Board recommendation, two of the Federal Communications  
24 Commission ("FCC") Commissioners had already questioned whether state commissions  
25 had previously undertaken the type of review that would ensure compliance with the  
26 requirements of Section 214 of the Act prior to designating an additional ETC in a service  
27 area of a Rural Telephone Company. For example, FCC Commissioners Abernathy and  
28 Adelstein jointly stated that:

29 [W]e are concerned that the ETC designation process -- and in particular the  
30 public interest analysis -- has been conducted in an inconsistent and sometimes  
31 insufficiently rigorous manner. Providing federal guidance on these issues will  
32 afford regulatory certainty to competitive ETCs, as well as incumbent LECs. It  
33 will also help stabilize the funding mechanism.

34 *Order and Order on Reconsideration*, In the Matter of Federal-State Joint Board  
35 on Universal Service, CC Docket No. 96-45, FCC 03-170, released July 14, 2003,  
36 separate joint statement of Commissioners Abernathy and Adelstein at p. 2.

1 The Joint Board in its February 27, 2004 recommendation echoed this same  
2 conclusion. First, the Joint Board recommended that state commission's should subject  
3 each ETC request to a "rigorous review." *Recommended Decision*, In the Matter of  
4 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 04J-1,  
5 released Feb. 27, 2004 ("*JB Recommendation*") at paras. 9 and 11. The Joint Board  
6 expressed its view that states and the FCC "should apply a higher level of scrutiny when  
7 evaluating ETC applications for designation in areas served by rural carriers." *Id.* at para.  
8 14 and n. 26.

9 **Q10. What basis do you have for your suggestion that it is necessary for the Commission**  
10 **to undertake a "rigorous review" of Nextel Partners' application?**

11 **A.** I believe that this is the first instance under which this Commission has been asked to  
12 evaluate a request for a second ETC in a service area of a Rural Telephone Company in  
13 Kentucky. On its face, Nextel Partners' request and the other information that it has  
14 placed in the record in this Case do not demonstrate any specific facts that warrant a grant  
15 of ETC status. In the absence of a thorough review and necessary findings, the public  
16 interest will not be served. In fact, the public interest may be harmed by designation of  
17 multiple ETCs in rural markets. Providing, to multiple carriers, funds that are intended  
18 for the support of the costs to provide ubiquitous, last resort universal service networks in  
19 rural markets will inevitably lead to instability in that funding mechanism and the  
20 discouragement of investment in the rural areas. The four Cooperatives exist because so-  
21 called "market forces" do not exist. In the absence of the universal service program and  
22 other purposeful cost allocation and recovery plans applied by policymakers over the last  
23 several decades, it is questionable whether the rural areas of Kentucky present a customer  
24 base sufficient to sustain one Universal Service provider, much less multiple ubiquitous  
25 carriers. The potential detriment to the public will become even greater if the federal  
26 policymakers choose to cap the USF available to an area and divide it among multiple  
27 ETCs on a constant-sum basis.

28 The ITG's data requests to Nextel Partners and Nextel Partners incomplete responses  
29 demonstrate that substantial questions of fact exist with respect to: 1) whether Nextel  
30 Partners truly provides, or offers to provide, Universal Service in the entirety of the areas  
31 under review; and 2) whether Nextel Partners will offer Universal Service in a manner  
32 subject to the Commission's ability to ensure that Nextel Partners complies with the  
33 Universal Service requirements that an ETC is obligated to demonstrate. Moreover,  
34 issues exist with respect to whether Nextel Partners could comply with its certification  
35 obligations regarding the use of federal USF disbursements, were it to be designated an  
36 ETC. Based on its application and the information provided, it is my impression that  
37 Nextel Partners believes that the Commission should simply "rubber stamp" its request.  
38 Obviously, this is not a result that serves the public interest.

39 These conclusions are consistent with those of the FCC. The FCC has noted that  
40 additional ETC draws from the federal USF had increased approximately seven fold over  
41 the eighteen month period from the first quarter 2001 through third quarter 2002. *Public*

1 Notice, Federal-State Joint Board on Universal Service Seeks Comments on Certain of  
2 the Commission's Rules Related to High-Cost Universal Support and the ETC  
3 Designation Process, CC Docket No. 96-45, FCC 03J-1, released February 7, 2003 at  
4 para. 10. These increases continue and cause alarm with respect to the ability of  
5 policymakers to maintain an effective and successful Universal Service support plan.  
6 Moreover, the FCC has concluded that the factors that should be considered include "the  
7 impact of multiple designations on the universal service fund" and that it has become  
8 "increasingly concerned about the impact on the universal service fund due to the rapid  
9 growth in high-cost support distributed to competitive ETCs." *Memorandum Opinion and*  
10 *Order*, In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular,  
11 LLC Petition for Designation as an Eligible Telecommunications Carrier in the  
12 Commonwealth of Virginia, CC Docket No. 96-45, FCC 03-338, released January 22,  
13 2004 ("*Virginia Cellular Decision*") at paras. 4 and 31.

14 **Q11. What do you mean by the "public interest" finding in your second principle?**

15 A. As the Commission is aware, a telecommunications carrier must be designated as an ETC  
16 by the Commission in order for that entity to be eligible to receive federal USF  
17 disbursements. This requirement is established in Section 214(e) of the Act. The plain  
18 and unambiguous language of Section 214(e)(2) states that the Commission is not  
19 required to designate an additional ETC within the service area of a Rural Telephone  
20 Company, including in the service areas of the four Cooperatives. Moreover, if the  
21 Commission is inclined to grant ETC status to an additional entity for a Rural Telephone  
22 Company's service area, the statute requires a finding that such designation is in the  
23 public interest. For the Commission's convenience, I am including as Attachment B the  
24 relevant text of Section 214 of the Act.

25 **Q12. What do you mean when you say that there is potential harm to the public interest if**  
26 **USF funds are divided among multiple ETCs on a constant-sum basis?**

27 A. Over the last several years, there have been proposals before the FCC that would establish  
28 a fixed (or only slightly growing) amount of USF dollars available to a particular area,  
29 and this amount would be divided among multiple ETCs in the same area. Under these  
30 proposals, in areas with multiple ETCs seeking USF support funds, the dollar amount to  
31 each ETC would be diluted. As the latest example, the recent Joint Board  
32 recommendation includes a new proposal under which support would be available only to  
33 a single primary line per customer, and each customer would designate the particular  
34 carrier serving the primary line. *JB Recommendation* at paras. 56-97. Among other  
35 negative implications of this proposal, this methodology would result in the division of  
36 USF support dollars among multiple ETCs to the extent that subscribers choose different  
37 primary line service providers. While the Joint Board discusses potential ways to soften  
38 the impact of diluting funds available to a Rural Telephone Company, this constant-dollar  
39 funding approach to be split among multiple ETCs would result in the reduction of funds  
40 available to the traditional last resort carrier.



1 However, the costs of the original universal service provider are related to the building  
2 and operation of a ubiquitous network, not the number of primary lines served and  
3 customers' choices of designated primary line provider. The traditional Rural Telephone  
4 Company must still build and operate a network that stands ready to reasonably provide  
5 service to every customer, while the new ETC does not. The Rural Telephone Company  
6 continues to offer Universal Service to all while the new ETC does not. Not only does  
7 the Rural Telephone Company still operate the same ubiquitous network but it finds itself  
8 in the position of serving as the default provider where new ETCs cannot or will not  
9 provide service. As the Rural Telephone Company either completely loses customers to  
10 other ETCs or does not lose customers but some customers chose other ETCs as their  
11 primary line provider, the ongoing costs of the incumbent last resort Universal Service  
12 provider do not change significantly, but its USF funding is decreased.

13 Under this scenario, as its USF support funds decline and its costs do not change  
14 significantly, the Rural Telephone Company must raise rates to its own subscribers or it  
15 must curtail some investment plans. Both results are contrary to the Universal Service  
16 principles. It would be particularly harmful to the public interest if the result of  
17 designating multiple ETCs meant that we would take USF funds away from those carriers  
18 that actually provide Universal Service and give those funds to other carriers, such as  
19 Nextel Partners, that do not provide Universal Service.

20 **Q13. What do you mean by your reference to designation of an ETC in the "service area"**  
21 **of a Rural Telephone Company?**

22 A. The service area for this purpose and with respect to the four Cooperatives is the "study  
23 area" of the Rural Telephone Company. Study area, in this case, means the entire  
24 certificated service area of each of the four Cooperatives. Study area represents the  
25 geographic scope of operations which is used for jurisdictional cost separations purposes  
26 and for the establishment of USF disbursement amounts. It is my understanding that this  
27 Commission has information on file which establishes the geographic boundaries of each  
28 of the four Cooperatives' service areas. I ask that the Commission take official notice of  
29 those geographic service areas.

30 **Q14. Does Nextel Partners provide wireless service throughout the study areas of the four**  
31 **Cooperatives.**

32 A. No. As I stated above, the ITG requested specific information from Nextel Partners to  
33 establish its service coverage in Kentucky, and specifically with respect to the areas  
34 served by the four Cooperatives. Nextel Partners provided only sketchy or no  
35 information to substantiate where it actually provides wireless mobile service. And the  
36 information it provided (claiming confidential treatment) is simply a pinpointing of cell  
37 sites across Kentucky that it currently operates that it has located on a map that is too  
38 small and imprecise for the determination of any service coverage. The detail in the map  
39 provided by Nextel Partners does not provide sufficient resolution or information to  
40 determine where Nextel Providers actually provides or offers service.

1 [Begin CONFIDENTIAL TREATMENT]

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[End CONFIDENTIAL TREATMENT]

39 Q15. Does Section 214 of the Act provide guidance with respect to what the Commission  
40 must do in its consideration of an application for ETC status?

1 A. Yes. The consideration is related to the FCC's threshold rules regarding the basic  
2 services that a carrier requesting ETC status must provide. In addition to the public  
3 interest determination noted above, an ETC applicant is required to demonstrate the  
4 following to the Commission:

- 5 1. The applicant's service must meet nine specific service criteria set forth by the FCC.  
6 a) voice grade access to the public switched telephone network;  
7 b) local usage free of charge;  
8 c) dual tone multi-frequency signaling or its equivalent;  
9 d) single party service or its equivalent;  
10 e) access to emergency services, such as 911;  
11 f) access to operator services;  
12 g) access to interexchange service;  
13 h) access to directory assistance;  
14 i) toll limitation for qualifying low-income customers -- toll limitation or toll  
15 restriction and both Lifeline and Linkup service.

16 These services are further defined in Section 54.101(a) of the FCC's Rules.

17 2. The applicant must advertise the availability of its ETC related services throughout the  
18 entire study area of each Rural Telephone Company service area where it seeks ETC  
19 status.

20 3. Furthermore, the applicant must be designated to serve and must offer service  
21 throughout the entire study area of the Rural Telephone Company.  
22

23 These are the minimum, threshold requirements established at the federal level and  
24 applicable to each ETC. I note that each state commission has its own discretion to apply  
25 requirements, including additional requirements, as a condition related to the designation  
26 of a specific applicant. The Commission can apply its own conditions to ensure that the  
27 public interest, as defined by state specific considerations, is protected.

28 **Q16. On what basis do you contend that the requirements cited above are "minimum"**  
29 **and that the Commission has "discretion" in establishing additional or its own**  
30 **conditions or requirements?**

31 A. With respect to ETC applications in Rural Telephone Company service areas, the Act  
32 uses the terms "public interest" and "public interest, convenience, and necessity." See 47  
33 U.S.C. Section 214(e)(2). These standards are entirely consistent with the public interest  
34 standards that this Commission has traditionally applied in its oversight of  
35 telecommunications in Kentucky. In fact, the courts have confirmed that state  
36 commissions possess the necessary authority pursuant to § 214 to impose reasonable  
37 requirements and conditions for ETC designation:

38 [N]othing in the statute . . . prohibits states from imposing their own eligibility

1 requirements. Instead, we read § 214(e)(2) as addressing how many carriers a  
2 state may designate for a given service area, and not how much discretion a state  
3 commission retains to impose eligibility standards. . . . Nothing in the statute,  
4 under this reading of the plain language, speaks at all to whether the FCC may  
5 prevent state commissions from imposing additional criteria on Eligible carriers .  
6 . . . [N]othing in the subsection prohibits the states from imposing their own  
7 eligibility requirements. This reading makes sense in light of the states' historical  
8 role in ensuring quality standards for local service.

9 *Texas Office of Public Utility Council v. FCC*, 183 F. 3d 393, 418 (5th Cir. 1999)  
10 (underlining added, footnotes omitted).

11 **Q17. What types of considerations do you believe that the Commission should keep in**  
12 **mind as it reviews this matter?**

13 A. Generally, in evaluating the impact on the public interest, the Commission should  
14 consider the impact that the designation will have on rural Kentucky consumers, the  
15 impact on the federal USF program, and on the realistic ability to achieve and maintain  
16 Universal Service objectives. In general, no customer of Nextel Partners or any newly  
17 designated ETC should be subject to lesser service quality or standards than that customer  
18 would receive as Universal Service from one of the incumbent rural Cooperatives, or any  
19 other member of the ITG. Moreover, neither Nextel Partners nor any other additional  
20 ETC should receive federal USF unless it abides by an equivalent set of standards of  
21 service quality and consumer protections as those standards and services are required of  
22 the incumbent Rural Telephone Companies in Kentucky. Accordingly, as part of a  
23 preliminary review of the ETC application of Nextel Partners, the Commission should, as  
24 a threshold matter, determine whether Nextel Partners actually provides the nine service  
25 criteria established by the FCC, as well as the ability to offer service throughout the entire  
26 service area of each of the four Cooperatives, particularly since the facts indicate that  
27 Nextel Partners does not.

28 **Q18. Would not the rigorous review that you are suggesting amount to a barrier to entry?**

29 A. No, it would not. ETC designation is not entry regulation. Nextel Partners is already a  
30 Commercial Mobile Radio Service ("CMRS") provider in Kentucky and it does not  
31 require USF fund to provide CMRS service. In my opinion, the regulatory oversight  
32 undertaken by the Commission in its effort to foster Universal Service becomes all the  
33 more necessary when an entity seeks funds as a "Universal Service provider" within the  
34 rural areas of Kentucky. In any event, the choice by Nextel Partners to seek "Universal  
35 Service provider" status (which is inherent in seeking designation as an ETC) should  
36 carry with it the responsibility to comply with all applicable and relevant regulations  
37 affecting quality of service and service provisioning within Kentucky. If the Commission  
38 considers granting ETC status to Nextel Partners, the ITG members ask the Commission  
39 to establish a "playing field" that is really level. Leveling the field is not simply a matter

1 of distributing funds to carriers purporting to be "Universal Service providers." If a  
2 carrier wants the benefit of funding, it should fulfill the responsibilities of quality service,  
3 as has each of the ITG members.

4 Accordingly, the ITG members submit that the Commission should assert its regulatory  
5 oversight over an ETC, irrespective of the technology it uses to deliver Universal Service  
6 to the rural consumers. This result is not only a matter of fundamental fairness among  
7 carriers, but is also required to ensure consumers are not without recourse to complain  
8 and/or challenge the very basis of service an ETC is properly required to offer. This  
9 result is consistent with the charge made by the U.S. Congress to this Commission to  
10 ensure that the designation of an additional ETC in a Rural Telephone Company service  
11 area truly is in the public interest.

12 **Q19. For purposes of ETC designation consideration, does the fact that Nextel Partners**  
13 **offers service through wireless technology justify a different treatment by the**  
14 **Commission with respect to service and quality standards imposed on all ETCs,**  
15 **including those that apply to the ITG members?**

16 A. No, it does not. The fact that Nextel Partners utilizes wireless technology to provide  
17 telecommunications services to its end users is not relevant to the factual findings and the  
18 public interest determination that the Commission must make for an ETC designation. I  
19 have been involved in ETC designation requests by wireless carriers in several other  
20 states, and I have come to understand that a lot of people find it convenient to confuse  
21 this issue. I want to point out, in this context, that state commissions have only been  
22 preempted from regulating entry and rates of CMRS service providers. This does not  
23 mean that the state commission is restricted from conditioning a grant of ETC status in a  
24 manner consistent with sound public policy and the public interest in accordance with  
25 standards established by the state commission. Obviously, the Congressional mandate to  
26 the Commission to protect the public interest under Section 214 would be a meaningless  
27 mandate if the Commission could not properly condition ETC designation consistent with  
28 the Universal Service objectives that are its fundamental purpose. The concepts of equal  
29 protection, technological neutrality, and fundamental fairness demand that all ETCs be  
30 held to the same standard regardless of the technology they use.

31  
32 **Q20. Can you provide specifics to support your position that Nextel Partner's services**  
33 **should not be considered "Universal Service" in rural areas of the four**  
34 **Cooperatives?**

35 A. Yes. Nextel Partners does not have a Universal Service offering comparable to the  
36 unlimited local calling plans offered by the ITG member companies. The ITG member  
37 companies offer their Universal Service package based on unlimited calling and with toll  
38 presubscription (which Nextel Partners does not offer). The fundamental issue for the  
39 Commission to consider is whether any service offered by Nextel Partners constitutes  
40 Universal Service in Kentucky. Will Nextel Partners provide a service that is consistent  
41 with the Section 254 Universal Service principles in the Act? Will it offer unlimited

1 local service without additional usage charges? Can the customer dial universally  
2 recognized dialing patterns (101xxxx) to reach the services of alternative carriers of  
3 choice? Can the Nextel Partners' customer reach operator services to place alternatively  
4 charged calls (e.g., collect)? Can the Nextel Partners' customer place 1-800 and other  
5 "toll-free" calls on an unlimited basis at any time without incurring usage charges?

6 Does Nextel Partners intend to provide Lifeline service to low-income users in Kentucky  
7 in a manner consistent with that which other carriers provide Lifeline? And will its  
8 version of Lifeline be an effective and successful public interest service as the Lifeline  
9 services provided by the four Cooperatives?

10 On the basis of the record before the Commission, the answer to each of these questions  
11 appears to be no. I respectfully suggest that if the answer to only one of these questions  
12 was "no," the fact is that Nextel Partners does not provide a level of service that this  
13 Commission and rural Kentucky customers expect from a Universal Service provider.

14 For Lifeline services provided by the four Cooperatives, I understand that the percentage  
15 of current Lifeline customers is as high as 16 percent of total subscribers. For  
16 approximately \$7.00 dollars a month, these Lifeline subscribers receive the same basic  
17 local exchange service, including unlimited calling within the local calling area and all  
18 other basic exchange service features. Nextel Partners is not committing to provide this  
19 form of Lifeline service to the customers in the service areas of the four Cooperatives.  
20 Nextel Partners has not answered the question of what its form of Lifeline service may be  
21 or whether its service offering will serve an equivalent public interest objective. Instead,  
22 the likely result is that Nextel Partners will not offer an equivalent Lifeline service, and  
23 the existing Rural Telephone Companies will be the default providers of Lifeline service.

24 The facts indicate that Nextel Partners will not provide a level of Universal Service that  
25 the Rural Telephone Companies provide or that consumers in Kentucky expect, including  
26 those that qualify for Lifeline services. As such, it is difficult to believe that it would be  
27 consistent with public interest to take USF funding away from the Rural Telephone  
28 Companies that do provide Universal Services and an effective and successful form of  
29 Lifeline, and give it to carriers that will neither provide an Universal Service nor an  
30 equivalent form of Lifeline service. If that were to be the result, the Rural Telephone  
31 Company would once again be forced to serve as the "fall back" provider to an overall set  
32 of customers with a lower level of average revenues.

33 **Q21. Is it permissible for the Commission to require Nextel Partners or any Universal**  
34 **Service provider to offer unlimited local exchange service on a flat rate basis within**  
35 **a service area as a condition to ETC designation?**

36 **A.** Yes. That is precisely what the ITG member companies that are designated as ETCs  
37 provide. The FCC has not prevented the Commission from acting to ensure that  
38 additional ETCs provide Universal Service that meets the Commission's criteria and  
39 public interest standard. The fact that the Commission may be precluded from "rate

1 regulating" a CMRS provider does not lead to a requirement that the Commission grant a  
2 CMRS carrier ETC status irrespective of determination that the service offerings and  
3 rates of the CMRS carrier are consistent with Universal Service. If that was the case, the  
4 Commission would be prevented from fulfilling its duty under Section 214 of the Act to  
5 protect the public interest when designating additional ETCs in Rural Telephone  
6 Company service areas?  
7

8 The minimum service requirements established by the FCC regarding Universal Service  
9 require only that some amount of local usage be included in the monthly charge. The  
10 FCC has not, however, established the amount of local usage that is required.

11 **Q22. With respect to the issue of whether Nextel Partners actually offers "Universal**  
12 **Service," can you provide any additional factual issues that must be resolved in**  
13 **order to warrant a grant of its request?**

14 **A.** There are many factual issues that must be addressed to determine whether Nextel  
15 Partners is in a position to offer and provide Universal Service to rural Kentucky  
16 consumers across the entirety of the study areas of the four Cooperatives. The  
17 consideration of these issues was the very focus of the informational requests that ITG  
18 submitted to Nextel Partners.

19 It is, at best, unclear whether Nextel Partners has any plans to offer or provide service in  
20 the entire service area of each of the four Cooperatives where Nextel Partners seeks ETC  
21 designation. It is unquestionable that when one moves away from the few major  
22 highways that only tangentially adjoin these rural Cooperatives' service areas, to those  
23 areas where consumers actually live in those rural service areas, one will find it difficult,  
24 if not impossible, to obtain a signal with Nextel Partners' service.

25 Moreover, prior to designating Nextel Partners as an ETC, I urge the Commission to be  
26 aware of the actual quality of service in the same way that the Commission is concerned  
27 about the quality of service offered by the Rural Telephone Companies serving rural  
28 Kentucky. What is the Nextel Partners' call completion and call drop rates? In fact, it is  
29 questionable whether a Nextel Partners' customer actually has a dedicated path for its  
30 communications, as required by the FCC's rules, if capacity constraints in its system limit  
31 the ability to make a call. Nextel Partners has refused to make this information available  
32 for any such analysis or finding.

33 Prior to designating Nextel Partners as an additional ETC in any Rural Telephone  
34 Company service area, the ITG members respectfully ask the Commission to ensure that  
35 the public interest is truly fostered and protected. Nextel Partners has provided nothing  
36 on the record to indicate how it can overcome the deficiencies in its service offerings.

37 There is no question that as a matter of fact and law, every dollar of USF disbursement  
38 that is received by an ITG member represents a dollar of real cost recovery related to the  
39 provision of Universal Service in Kentucky. Prior to any grant of ETC status in rural

1 service areas, the ITG members believe the public interest demands assurance that any  
2 USF dollars that would be directed to Nextel Partners would be used in Kentucky to  
3 provide Universal Service, and not to fund some other service in some other areas or to  
4 distribute to shareholders of Nextel Partners as dividends.

5 These conclusions are also consistent with the Joint Board's recommendations, among  
6 others, that States should consider whether an ETC applicant has demonstrated adequate  
7 financial resources consistent with its commitments, a commitment and ability to provide  
8 the supported services upon reasonable request, the ability to remain functional during  
9 emergencies, and its compliance with consumer protection requirements. *JB*  
10 *Recommendation* at para. 22.

11 **Q23. Is Nextel Partners' claim of a competitive choice, as reflected in its Petition, a**  
12 **sufficient public interest finding to warrant its designation as an ETC?**

13 **A.** No. Nextel Partners claims that its designation as an ETC is in the public interest because  
14 it provides "competition." If competition for the sake of competition was the national  
15 goal, Nextel Partners might be right. The nation's telecommunications goals, though,  
16 focus first and foremost on the provision of Universal Service. While the introduction of  
17 competition in most market areas may be beneficial because the characteristics of these  
18 areas is robust enough to rely on market forces to bring basic and advanced  
19 telecommunications services, the Congress realized that the market areas served by Rural  
20 Telephone Companies are not so robust. In the non-rural telephone company service  
21 areas, the Telecommunication Act assumes designation of multiple ETCs. In the Rural  
22 Telephone Company service areas, however, Congress recognized that the designation of  
23 multiple ETCs might not serve the public interest. It is for this reason that the Congress  
24 gave the state commissions the right and obligation to make a public interest  
25 determination prior to granting additional ETC status in Rural Telephone Company  
26 service areas.

27 If competition alone was a sufficient basis to consider an ETC application to be in the  
28 public interest in a rural area, there would be no reason for Congress to ask the  
29 Commission to make a distinct public interest finding with respect to each ETC  
30 application. If merely increasing competition were enough to satisfy the public interest  
31 test, Congress' limitation on the designation of additional ETCs in Rural Telephone  
32 Company study areas would be an "empty" directive. Congress recognized, however,  
33 that it does not always make sense to designate additional ETCs in Rural Telephone  
34 Company service areas, and left it to the Commission to determine whether the  
35 designation is in the public interest.

36 These conclusions are consistent with those of the FCC. In its *Virginia Cellular*  
37 *Decision* (at para. 4), the FCC stated that "the value of increased competition, by itself, is  
38 not sufficient to satisfy the public interest test in rural areas."



1 **Q24. Can you please summarize why the Commission should conclude that designation of**  
2 **Nextel Partners as an ETC in the service areas of the four Cooperatives is not**  
3 **consistent with the public interest?**

4 **A.** Nextel Partners has not provided evidence that it actually can or does offer and provide  
5 the services that are required of an ETC in the study areas of the four Cooperatives in  
6 which it seeks ETC designation. In fact, the information that Nextel Partners has put on  
7 the record indicates that it does not provide or offer service in the entire service areas.

8 Nextel Partners has made no explicit commitment as to how it intends to invest in new  
9 cell sites and other wireless network to offer and provide ubiquitous service across these  
10 service areas. In any event, such commitments would be monumental given the fact that  
11 its current wireless service is either nonexistent, nascent, or covers only a small subset of  
12 the area of the relevant company service areas based on its coverage along a small  
13 number of major highways. Nextel Partners provides no assurance or basis to conclude  
14 that any consumer would have Universal Service when that consumer requests service  
15 away from those major highways where Nextel Partners has concentrated its service.

16 The minimal factual information provided by Nextel Partners together with the public  
17 policy concerns surrounding additional ETC designations within Rural Telephone  
18 Company service areas demonstrate that the overall public interest will not be served by  
19 designation of Nextel Partners as an ETC in the service areas of the four Cooperatives.

20 **Q25. Does this conclude your testimony?**

21 **A.** Yes.

## **SUMMARY OF WORK EXPERIENCE AND EDUCATION**

**Steven E. Watkins**

April 2004

My entire 28-year career has been devoted to service to smaller, independent telecommunications firms that primarily serve the small-town and rural areas of the United States.

I have been a consultant with the firm of Kraskin, Lesse & Cosson, LLC since June, 1996. The firm concentrates its practice in providing professional services to small telecommunications carriers. My work at Kraskin, Lesse & Cosson, LLC, has involved assisting smaller, rural, independent local exchange carriers ("LECs") and competitive local exchange carriers ("CLECs") in their analysis of a number of regulatory and industry issues, many of which have arisen with the passage of the Telecommunications Act of 1996. I am involved in regulatory proceedings in several states and before the Federal Communications Commission on behalf of small LECs. These proceedings are examining the manner in which the Act should be implemented. My involvement specifically focuses on those provisions most affecting smaller LECs.

I have over the last seven years instructed smaller, independent LECs and CLECs on the specific details of the implementation of the Act including universal service mechanisms, interconnection requirements, and cost recovery. On behalf of clients in several states, I have analyzed draft interconnection agreements and conducted interconnection negotiations and arbitrations pursuant to the 1996 Act.

For 12 years prior to joining Kraskin, Lesse & Cosson, LLC, I held the position of Senior Industry Specialist with the Legal and Industry Division of the National Telephone Cooperative Association ("NTCA") in Washington, D.C. In my position at NTCA, I represented several hundred small and rural local exchange carrier member companies on a wide array of regulatory, economic, and operational issues. My work involved research, analysis, formulation of policy, and expert advice to member companies on industry issues affecting small and rural telephone companies.

My association work involved extensive evaluation of regulatory policy, analysis of the effects of policy on smaller LECs and their rural customers, preparation of formal written pleadings in response to FCC rulemakings and other proceedings, weekly contributions to association publications, representation of the membership on a large number of industry committees and task forces, and liaison with other telecom associations, regulators, other government agencies, and other industry members. I also attended, participated in and presented seminars and workshops to the membership and other industry groups too numerous to list here.

For those not familiar with NTCA, it is a national trade association of approximately 500 small, locally-owned and operated rural telecommunications

providers dedicated to improving the quality of life in rural communities through advanced telecommunications. The Association advocates the interests of the membership before legislative, regulatory, judicial, and other organizations and industry bodies.

Prior to my work at NTCA, I worked for over eight years with the consulting firm of John Staurulakis, Inc., located in Seabrook, Maryland. I reached a senior level position supervising a cost separations group providing an array of management and analytical services to over 150 small local exchange carrier clients. The firm was primarily involved in the preparation of jurisdictional cost studies, access rate development, access and exchange tariffs, traffic analysis, property records, regulatory research and educational seminars.

For over ten years during my career, I served on the National Exchange Carrier Association's ("NECA") Industry Task Force charged with reviewing and making recommendations regarding the interstate average schedule cost settlements system. For about as many years, I also served in a similar role on NECA's Universal Service Fund ("USF") industry task force.

I graduated from Western Maryland College in 1974 with a Bachelor of Arts degree in physics. As previously stated, I have also attended industry seminars too numerous to list on a myriad of industry subjects over the years.

During my career representing small telecommunications firms, I estimate that I have prepared formal written pleadings for submission to the Federal Communications Commission on behalf of NTCA member and Kraskin, Lesse & Cosson client LECs in over two hundred proceedings. I have also contributed written comments in many state proceedings on behalf of Kraskin, Lesse & Cosson client LECs. I have provided testimony in proceedings before the Georgia, Pennsylvania, Indiana, Kentucky, Missouri, Nebraska, Minnesota, Montana, Tennessee, Kansas, South Carolina, New Mexico, West Virginia, and Louisiana public service commissions. Finally, I have testified before the Federal-State Joint Board examining jurisdictional separations changes.

**Attachment B**  
**Excerpts from Section 214 of the**  
**Communications Act of 1934, As Amended**

e) Provision of Universal Service.--

(1) Eligible telecommunications carriers.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers.– A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

...

(5) Service area defined.– The term 'service area' means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>PETITION OF NPCR, INC.,</b>	)	
<b>D/B/A NEXTEL PARTNERS FOR</b>	)	<b>CASE NO. 2003-00143</b>
<b>DESIGNATION AS AN ELIGIBLE</b>	)	
<b>TELECOMMUNICATIONS CARRIER IN</b>	)	
<b>THE COMMONWEALTH OF KENTUCKY</b>	)	

**ATTACHMENT C**

**TO THE DIRECT TESTIMONY OF  
STEVEN E. WATKINS**

**CONFIDENTIAL**